



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Relocation Advisors, Inc.

File: B-246157

Date: January 24, 1992

Charles W. Mahan, Esq., Dunlevey, Mahan & Furry, for the protester.

David M. Greim, Esq., Muldoon & Ferris, for Lewis & Michael/United Joint Venture, an interested party.

Sandra G. Zimmerle, Esq., and Susan P. McNeill, Esq., Department of the Air Force, for the agency.

C. Douglas McArthur, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly awarded a contract for transportation services to a joint venture which included one party that did not have state operating authority is dismissed where the contracting officer made an affirmative determination that the bidder was responsible, and the solicitation did not require that a bidder hold operating authority as a prerequisite to finding the bidder responsible.

DECISION

Relocation Advisors, Inc. protests the award of a contract under invitation for bids (IFB) No. F33601-91-B-0018, issued by the Department of the Air Force for packaging, transportation, and storage of household goods for service members and civilians within the state of Ohio. The protester alleges that only three members of the joint venture that submitted the low bid possess the required certificate of public convenience and necessity from the state of Ohio to provide services and the joint venture itself does not.

We dismiss the protest.

The solicitation contains a modified version of the clause at Federal Acquisition Regulation (FAR) § 52.247-2, requiring bidders to certify whether they hold authorization from the Interstate Commerce Commission or other cognizant regulatory body and if so, to furnish the authorization number. If requested by the government, the offeror is required to

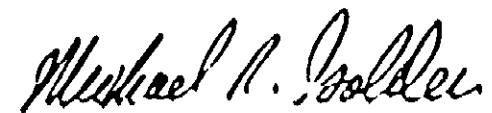
furnish copies of the authorization before moving material under any contract awarded. The agency has obtained an informal opinion from the Ohio Public Utilities Commission (PUC) to the effect that there is no need for a joint venture to obtain a certificate in its own name where the coventurers already have individual certificates permitting them to perform the required services.

The agency found the joint venture responsible based on the authorizations to which three members of the joint venture certified. We have previously held that this certification is merely a listing requirement to provide information for the contracting officer's convenience to aid in determining responsibility; it does not constitute a definitive responsibility criterion. Brazil Van and Storage Corp., B-234394, Mar. 24, 1989, 89-1 CPD ¶ 301. Where, as here, the contracting officer has made an affirmative determination of the awardee's responsibility, we will not review that determination without a showing that the contracting officer acted fraudulently or in bad faith or failed to apply definitive responsibility criteria. 4 C.F.R. § 21.3(m)(5) (1991); Murdaugh Constr. Co. Inc., B-245133, Aug. 14, 1991, 91-2 CPD ¶ 150. There is no such showing here. In fact, in Quality Transp. Servs., Inc., B-225611, Mar. 26, 1987, 87-1 CPD ¶ 346, we found that the same FAR clause did not require that a bidder have the required necessary operating authority as a prerequisite to being found responsible, and that a joint venture which included one party which did not have the requisite operating authority could properly be found responsible.

The protester alleges that the acceptance of the awardee's bid deviates from the advice that the agency offered orally at the pre-bid conference. The pre-bid conference minutes show that the protester specifically asked whether a bidder could lease authority from carriers holding a certificate or whether the bidder itself had to possess a certificate. The record shows that two members of the joint venture submitting the low bid had previously raised a challenge to the Ohio PUC, concerning the protester's authority to operate under a certificate leased from a predecessor corporation, a challenge resolved by stipulation. The contracting officer was responding primarily to that part of the commission's ruling regarding the Air Force's responsibility to contract with carriers holding a certificate conforming to state law, advising potential bidders that bidding should be limited to firms actually holding a certificate. It is clear that neither the question nor the answer addressed the situation here, whether it would be appropriate to accept a bid from a joint venture which uses the operating authority of its individual members to perform the required services. We do

not think the contracting officer's response in any way altered the informational nature of the FAR clause or suggested that the operating authority was other than a matter of responsibility. An agency cannot, by the terms of a solicitation or amendment to the solicitation, convert a matter of responsibility into one of responsiveness. Gardner Zemke Co., B-238334, Apr. 5, 1990, 90-1 CPD ¶ 372.

We dismiss the protest.



Michael R. Golden
Assistant General Counsel